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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR part 1250

[FDMS No. NARA-13-0003]; Agency No. NARA-2013-037

RIN 3095-AB73

NARA Records Subject to FOIA

AGENCY: National Archives and Records Administration

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulation governing Freedom of Information Act (FOIA) access to NARA's archival holdings and NARA's own operational records. The proposed revisions include clarification of which records are subject to the FOIA and NARA's authority to grant access, and adjustments to NARA's FOIA procedures to incorporate changes resulting from the OPEN FOIA Act of 2009, the OPEN Government Act of 2007, and the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The proposed rule will affect individuals and organizations that file FOIA requests for NARA operational records and archival holdings.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

You may submit comments, identified by RIN 3095-AB73, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions

for submitting comments.

- E-mail: kimberly.keravuori@nara.gov. Include RIN 3095-AB73 in the subject line of the message.

- Fax: 301-837-0319.

- Mail: (For paper, disk, or CD-ROM submissions. Include RIN 3095-AB73 on the submission) Regulations Comments Desk, Strategy Division (SP); Suite 4100; National and Archives Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001

- Hand delivery or courier: Deliver comments to 8601 Adelphi Road; College Park, MD.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking (RIN 3095-AB73). All comments received may be published without changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by telephone at 301-837-3151, by e-mail to kimberly.keravuori@nara.gov, or by mail to Kimberly Keravuori, Regulations Program Manager; Strategy Division (SP), Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

SUPPLEMENTARY INFORMATION:

Types of records and FOIA access

Unlike most agencies, NARA has two categories of records governed by FOIA:

NARA's own operational records and archival holdings of the Federal government. Among the archival holdings, the FOIA applies only to executive branch records in NARA's legal custody and to Presidential records created since 1981. Presidential materials in NARA's custody that were created before 1981 were donated to the Federal government by the President who created them, except that Nixon presidential materials are governed by the Presidential Recordings and Materials Preservation Act (see Part 1275). Access to those records is governed by the deed of gift pertaining to those records, and they are therefore not subject to the FOIA.

NARA cannot grant FOIA access to the following archival holdings. Access to these holdings must be granted by the organizations that created them:

- Executive agency records stored in NARA's federal records centers remain in the legal custody of the agencies that created them. Access to these records can be granted only by the creating agency.
- The records of the U.S. House of Representatives and U.S. Senate at NARA remain in the legal custody of the Congress. Access to those records is governed by the Secretary of the Senate and the Speaker of the House.
- Records of the Supreme Court of the United States at NARA remain in the legal custody of the Supreme Court, and it controls access to these records. Section 1250.6 refers requesters to other NARA regulations governing access to these records and to the records of other Federal legislative and judicial branch agencies, which are not subject to FOIA.

Changes due to OPEN Government and OPEN FOIA acts

Changes resulting from the OPEN Government Act of 2007 (Public Law 110-

175) and OPEN FOIA Act of 2009 (Public Law 111-83) are found throughout the proposed rule.

The new § 1250.2 reflects NARA's open access mission and culture, which are defined by a presumption of openness and by discretionary disclosures of information..

Section 1250.3 adds the definition of a FOIA Public Liaison and expanded definition of a news media representative. These two additions are requirements under the OPEN Government Act. The proposed § 1250.20 requires requesters to notify NARA of their current mailing address. Section 1250.22 explains the FOIA Customer Service Centers. And § 1250.24 addresses how to submit a FOIA request to NARA online through the *FOIAonline* system.

The proposed § 1250.26 sets the standard time for NARA to administratively close a FOIA request at 60 calendar days from the date of last correspondence with a requester and informs requesters that NARA does not have authority to declassify national security information and that NARA must refer all requests for declassification to agencies with such authority. The proposed § 1250.27 includes procedures informing a requester of an estimated date of completion for their FOIA request.

Subpart C, Fees, governs the fees charged by NARA for FOIA requests. Proposed § 1250.50 states that NARA's fee schedule for obtaining copies of archival records can be found on NARA's webpage and that unresolved fee negotiations can result in the administrative closing of a FOIA request. Section 1250.52 establishes increased fees for the copying of operational records.

Subpart D, Appeals, governs the procedures for requesters to file appeals and how NARA will process those appeals. Proposed § 1250.74 informs requesters of the Office

of Government Information Services (OGIS) and its mediation and dispute resolution services between FOIA requesters and Federal agencies.

Regulatory analysis

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). The proposed amendment is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect only people and organizations who file FOIA requests with NARA. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR part 1250

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Information, Records, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to amend 36 CFR part 1250 as follows:

1. Revise part 1250 to read as follows:

PART 1250—NARA RECORDS SUBJECT TO FOIA

Subpart A—General Information About Freedom of Information Act (FOIA) Requests

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Subpart C—Fees

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- 1250.70 When may I appeal NARA's FOIA determination?
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- 1250.80 How does a submitter identify records containing confidential commercial information?
- 1250.82 How does NARA process FOIA requests for confidential commercial information?

Authority: 44 U.S.C. § 2104(a) and § 2204 (3)(c)(1); 5 U.S.C. § 552; E.O. 13526, 75 FR 707 and 75 FR 1013, 3 CFR, 2009 Comp., p. 298-327; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Information About Freedom of Information Act (FOIA)

Requests

§ 1250.1 Scope of this part.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, for NARA operational records and archival records that are subject to FOIA. This part contains the rules that NARA follows to process FOIA requests, such as the amount of time NARA has to make a determination regarding the release of records and what fees NARA may charge. Other NARA regulations in 36 CFR parts 1254 through 1275 provide detailed guidance for conducting research at NARA.

§ 1250.2 Presumption of Openness

NARA, as an archives, has always been committed to providing public access to as many of its records as possible. NARA therefore continues to affirmatively release and post records, or descriptions of such records, online in the absence of any FOIA request. NARA also makes every effort to make discretionary disclosures of information that could otherwise be withheld under an exemption.

§ 1250.3 Definitions.

The following definitions apply to this part:

- (a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States.
- (b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or entity on whose behalf the request is made.

(c) *Confidential commercial information* means records provided by a submitter that may contain trade secrets or confidential business or financial information that is exempt from release under the FOIA because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a request made by a school, university or other educational institution that operates a program of scholarly research. To qualify for this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(e) *Expedited processing* means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

(f) *Fee category* means one of the four categories set forth in the FOIA to determine whether a requester will be charged fees for search, review, and duplication. The categories are: commercial requesters; non-commercial scientific or educational institutions; news media requesters; and all other requesters.

(g) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain standards set forth in the FOIA are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(h) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(i) *FOIA request* means a written request, that cites the Freedom of Information Act, for access to NARA operational records, records of the executive branch of the Federal Government held by NARA, and/or Presidential or Vice Presidential records in the custody of NARA that were created after January 19, 1981.

(j) *Freedom of Information Act (FOIA)* means the law codified at 5 U.S.C. § 552 that provides the public with the right to request government records from Federal executive branch agencies.

(k) *Freelance journalist* means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not in its permanent or full-time employ. A publication contract would be the clearest proof of a solid basis, but the individual's publication history may also be considered in demonstrating this solid basis.

(l) *News media representative* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public; one that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large; publishers of periodicals, including print and online publications, who make their products available for purchase or subscription to the general public (but only in those instances when they can qualify as disseminators of news); and freelance journalists who can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is employed by that entity.

(m) *Non-commercial scientific institution* means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research.

(n) *Operational records* means records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include archival records as defined in paragraph (a) of this section.

(o) *Original Classification Authority* means the authority to classify information as National Security Information at creation, granted by the President of the United States in Executive Order 13526, Sec. 1.3.

(p) *Other requesters* means any individual who does not qualify as a commercial-use requester, representative of the news media including a freelance journalist, or an educational or non-commercial scientific institution requester.

(q) *Presidential records* means the official Presidential and Vice Presidential records created or received by the President, the Vice President, or the White House Staff since January 20, 1981, and covered under the Presidential Records Act, 44 U.S.C. §§ 2201-2207. Presidential Executive Orders also apply to these records.

(r) *Presidential Records Act* means the law that, in part, governs access to presidential records and is codified at 44 U.S.C. §§ 2201-2207 and Part 1270 of these regulations. The law contains six restrictions to release of information, which apply for twelve years after a President leaves office. Four of the PRA restrictions are identical to FOIA exemptions 1, 3, 4, and 6. Two relate to appointments to Federal office and confidential communications requesting or submitting advice between the President and his advisers, or between such advisers. The PRA also excludes application of FOIA exemption 5.

(s) *Review* means the examination of documents responsive to a request to determine if any, or any part of them, are exempt from release under FOIA and to determine if NARA will release exempted records.

(t) *Search* means the process of looking for and retrieving records or information responsive to a request. It also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(u) *Submitter* means any person or entity providing potentially confidential commercial information to an agency, which information may be subject to a FOIA request. The term submitter includes, but is not limited to, individuals, corporations, state governments, and foreign governments.

§ 1250.4 Who can file a FOIA request?

Any individual, partnership, corporation, association, or public or private organization other than a Federal agency, regardless of nationality, may file a FOIA request with NARA. The Administrative Procedure Act, 5 U.S.C. § 551(2), excludes Federal agencies from filing FOIA requests. However, state and local governments may file FOIA requests.

§ 1250.6 Does FOIA apply to all of the records at NARA?

No, FOIA applies only to the records of the executive branch of the Federal government and certain Presidential and Vice Presidential records. The following chart may help determine how to request access to NARA's records:

If you want access to ...	Then access is governed by . . .
(a) Records of executive branch agencies	This CFR part and parts 1254 through 1260 of this chapter. FOIA applies to these records.

(b) Records of the Federal courts	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(c) Records of Congress and legislative branch agencies	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(d) Presidential records (created by Presidents and Vice Presidents holding office since 1981).	This part and parts 1254 through 1270 of this chapter. FOIA applies to these records 5 years after the President leaves office.
(e) Documents created by Presidents holding office before 1981 and housed in a NARA Presidential library.	The deed of gift under which they were given to NARA. These documents are not agency records and FOIA does not apply to these materials.
(f) Nixon Presidential materials	Part 1275 of this chapter. FOIA does not apply to these materials.

§ 1250.8 Do I need to use FOIA to gain access to records at NARA?

(a) Most archival records held by NARA have no restrictions to access and are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records. (See Subpart B of 36 C.F.R. 1256 for more information about how to access archival records).

(b) If you are seeking access to archival records that are not yet available to the public, you will need to file a FOIA request. (See part 1260 for additional procedures for access to security-classified records.)

(c) You must file a FOIA request when you request access to NARA operational records that are not already available to the public. (See § 1256.22 for information on requesting access to restricted archival records.)

(d) If you are requesting records that you know to be classified to protect national security interests, you may wish to use the Mandatory Declassification Review process, which is set forth at § 1260.70.

§ 1250.10 Does NARA provide access to all the executive branch records housed at NARA facilities?

(a) NARA provides access to the records NARA creates (operational records) and records originating in the executive branch that have been transferred to the legal custody of the Archivist of the United States (archival records).

(b) NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri, is the repository of twentieth-century personnel and medical records of former members of the military and of former civilian employees of the Federal government. Those official personnel files that have been transferred to the legal custody of NARA, which occurs when 62 years have passed from the date of separation, are processed by NARA according to §§ 1250.208 through 1250.32 of this part. Those personnel and medical records that remain in the legal custody of the agencies that created them are governed by the FOIA and other access regulations of the creating agencies. The NPRC processes FOIA requests under authority delegated by the originating agencies, not under the provisions of this part.

(c) NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these

records should be requested through the originating agency. NARA does not process FOIA requests for these records.

(d) If NARA receives a FOIA request for a record in the legal custody of an originating agency, it will forward that request to the originating agency for processing. NARA will also provide the requester with notification that it has done so and with contact information for the originating agency. (See 36 CFR 1256.2 for more information about how to access records that are stored in a Federal Records Center.)

§ 1250.12 What types of records are available in NARA's FOIA Library?

(a) NARA makes available certain materials set forth in the FOIA for public inspection and copying in both its physical FOIA Library as well as the NARA website, available at: <http://www.archives.gov/foia/electronic-reading-room.html>.

(b) The materials provided through NARA's FOIA Library include:

- (1) Final NARA orders;
- (2) Written statements of NARA policy that are not published in the *Federal Register*;
- (3) Operational staff manuals and instructions to staff that affect members of the public;
- (4) Copies of records requested three or more times under FOIA and other records that have been, or are likely to become, the subject of subsequent FOIA requests for substantially the same records; and
- (5) An index, updated quarterly, to these materials.

(c) These materials are available during normal working hours at the NARA facility where the records are located. See 36 CFR part 1253 and NARA's web site at <http://www.archives.gov/> for a thorough description of NARA facilities and research room procedures.

(d) Any of this material that was created after October 31, 1996, also will be placed on NARA's website at <http://www.archives.gov/foia/electronic-reading-room.html>.

(e) For paper copies of the index to these materials write to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

Subpart B—How To Request Records Under FOIA

§ 1250.20 What do I include in my FOIA request?

In your FOIA request:

(a) Describe the records you seek in enough detail to allow NARA staff to find them with a reasonable amount of effort. The more information you provide, the better possibility NARA has of finding the records you are seeking. Information that will help NARA find the records includes:

(1) The agencies, offices, or individuals involved;

(2) The approximate date when the records were created; and

(3) The subject or description of the records sought.

(b) Include your name and full mailing address. If possible, please include a phone number or email address as well. This information will allow us to reach you faster if we have any questions about your request. It is incumbent on the requester to maintain a current mailing address with the office where they have filed the FOIA request.

(c) Mark both your letter and envelope with the words “FOIA Request.”

(d) In filing your request, you may find it helpful to consult NARA’s “Freedom of Information Act Reference Guide” – which is available electronically at <http://www.archives.gov/foia/foia-guide.html> and in paper form. For a paper copy of

NARA's FOIA Guide write to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about the FOIA, you may refer directly to the statute at 5 U.S.C. § 552 or visit <http://www.foia.gov>.

§ 1250.22 Where do I send my FOIA request?

NARA has several FOIA Customer Service Centers that process FOIA requests. You should send your FOIA request to the appropriate FOIA Customer Service Center that you believe would have the records you seek.

(a) For requests for archival records in the Washington, DC, area, mail your request to the Chief, Special Access and FOIA Staff (RD-F), Room 5500, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You may also email them to Specialaccess_foia@nara.gov.

(b) For archival records in any of NARA's regional records services facilities, send the FOIA request to the director of the facility in which the records are located. The addresses for these facilities are listed at <http://www.archives.gov/locations/>.

(c) For Presidential records subject to FOIA, mail your request to the director of the library in which the records are located. The addresses for these facilities are listed at <http://www.archives.gov/locations/>.

(d) For the operational records of any NARA unit except the Office of the Inspector General, mail your request to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You may also email requests to FOIA@nara.gov, or submit your requests online at <https://foiaonline.regulations.gov>.

(e) For records of the Inspector General, write to Office of the Inspector General (OIG), FOIA Request, Room 1300, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(f) If you are unable to determine where to send your request, send it to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. That office will forward your request to the office(s) that is likely to have the records you are seeking. Your request will be considered received when it reaches the proper office's FOIA staff.

(g) If you have questions concerning the processing of your FOIA request, you may contact the designated FOIA Customer Service Center as set forth above in §§ 1250.22(a)-(f) for the facility processing your request. If that initial contact does not resolve your concerns, you may wish to contact the designated FOIA Public Liaison for the facility processing your request. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at <http://www.archives.gov/foia/contacts.html>.

(h) If you do not have access to the internet, you may request the mailing addresses for NARA's FOIA Public Liaisons and Customer Service Centers by writing to: NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

§ 1250.24 Will NARA accept a FOIA request electronically?

Yes. Requests for NARA operational records may be submitted and tracked through the *FOIAonline* program, accessible at <https://foiaonline.regulations.gov>, or by sending an e-mail to FOIA@nara.gov. The body of the message must contain all of the information

listed in §1250.20. You may also file a FOIA request by e-mailing your request to the offices listed in § 1250.22.

§ 1250.26 How will NARA process my FOIA request?

(a) NARA will acknowledge all FOIA requests within 20 working days. The acknowledgement letter or e-mail will inform requesters of the tracking number for their request, and any complexity in processing that may lengthen the time required to reach a final decision on the release of the records. The acknowledgement letter may also be used to seek additional information to clarify the request or to ask that the scope of a voluminous request be narrowed. Should any correspondence be unanswered by the requester, or returned as undeliverable, NARA reserves the right to administratively close the FOIA request 60 calendar days after the date of the last correspondence NARA sent. NARA places FOIA requests in a queue to be processed on a first-in, first-out basis.

(b) NARA will make a determination on the release of the records you requested within the 20 working days, but if unusual circumstances prevent making a decision within 20 working days, NARA will inform you in writing with an estimated date of completion. Unusual circumstances include the need to:

- (1) Search for and collect the records from field facilities;
- (2) Search for, collect, and review a voluminous amount of records that are part of a single request;
- (3) Consult with another agency before releasing records; or
- (4) Refer records for declassification.

(c) If NARA needs to extend the deadline for more than an additional 10 working days, NARA will ask if you wish to modify your request so that it can answer the request

promptly. If you do not agree to modify your request, NARA will work with you to arrange an alternative schedule for review and release.

(d) NARA does not have the authority to declassify and release records containing national security information without the approval of the agencies that have Original Classification Authority for the information contained in the record. NARA will send copies of the documents to the appropriate agencies for declassification review. NARA will send you an initial response to your FOIA request within 20 working days, informing you of this consultation with another agency and upon request an estimated date of completion, except to the extent that the association with the other agency might itself be classified.

(e) If you have requested Presidential or Vice Presidential records and NARA determines that the records are not subject to any applicable FOIA or Presidential Records Act (PRA) exemption and therefore can be released, NARA must inform the current and former President(s) or Vice President(s) of the intention to disclose information from those records. After receiving the notice, and pursuant to the current Executive Order on the implementation of the PRA, the current and former President(s) have a period of time in which to consider whether to invoke Executive Privilege to deny access to the requested information. NARA will send you an initial response to your FOIA request within 20 working days, informing you of the status of your request. However, the final response to your FOIA request can be made only at the end of the Presidential notification period set forth in the Executive Order.

(f) If you have requested records containing confidential commercial information, refer to § 1250.82 for information on how NARA will process that request.

§ 1250.27 How does NARA determine estimated dates of completion for FOIA requests?

(a) For a FOIA requester who asks for an estimated date of completion for records that do not require consultation with another agency, NARA will provide the requester with an estimated date of completion based on a reasonable judgment at that point in time as to how long it will take to complete the request. Given the uncertainty inherent in establishing any estimate, the estimated date of completion may be subject to change at any time.

(b) When a FOIA requester asks for an estimated date of completion for records that must be reviewed by another agency, NARA will provide the requester with an estimated date of completion based on a reasonable judgment at that point in time as to how long it will take to complete the request, which includes the following additional steps:

- (1) When sending documents for consultation to another agency, NARA will include in the initial consultation letter to that agency a request for an estimated date of completion.
- (2) Estimated dates of completion provided by consulting agencies will be retained in the relevant request file and will be used by NARA to determine the estimated date of completion for the FOIA requester.
- (3) If the consulted agency or agencies do not provide NARA with an estimated date of completion, NARA will provide the requester with an estimate based on NARA's general experience working with the agency or agencies and the types and volumes of records at issue.

§ 1250.28 How do I request expedited processing?

(a) In certain cases NARA will move your FOIA request or appeal to the head of our FOIA queue. We may grant expedited processing if a requester can show:

- (1) A reasonable expectation of an imminent threat to an individual's life or physical safety;
- (2) A reasonable expectation of an imminent loss of a substantial due process right; or
- (3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(b) NARA may expedite requests, or segments of requests, only for records over which we have control. If NARA must refer a request to another agency, we will so inform you and suggest that you seek expedited review from that agency. NARA cannot expedite the review of classified records nor can we shorten the Presidential notification period described in § 1250.26(e).

(c) To request expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge, explaining the basis of your need for expedited processing. All such requests must be sent to the appropriate official at the address listed in §1250.22. You may request expedited processing when you first request records or at any time during our processing of your request or appeal.

(d) NARA will respond to your request for expedited processing within 10 days of our receipt of your request. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. We will

inform you if we deny your request for expedited processing. If you decide to appeal that denial, we will expedite our review of your appeal.

§ 1250.30 How will NARA respond to my request?

(a) NARA will send a response that provides the requester with NARA's release determination, including whether any responsive records were located, how much responsive material was located, whether such records have been released in full or withheld in full or in part, where you may review the records, and any fees you must pay for the request.

(b) If NARA denies any part of your request, the response will explain the reasons for the denial, which FOIA exemptions may apply to withhold records, and your right to appeal that determination.

(c) Records may be withheld in full or in part if any of the nine FOIA exemptions apply. NARA will withhold information only where disclosure is prohibited by law (such as information that remains classified, or information that is specifically closed by statute) or where NARA reasonably foresees that disclosure would cause harm to an interest protected by one of the FOIA exemptions. In addition, if only part of a record must be withheld, NARA will provide access to the rest of the information in the record.

Information that may be exempt from disclosure under the FOIA is:

Section of the FOIA:	Reason for exemption:
5 U.S.C. § 552(b)(1)	Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under the Executive order.

5 U.S.C. § 552(b)(2)	Related solely to the internal personnel rules and practices of an agency.
5 U.S.C. § 552(b)(3)	Specifically exempted from disclosure by statute (other than § 552(b) of this title), provided that the statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
5 U.S.C. § 552(b)(4)	Trade secrets and commercial or financial information obtained from a person that are privileged or confidential.
5 U.S.C. § 552(b)(5)	Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.
5 U.S.C. § 552(b)(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
5 U.S.C. § 552(b)(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) Could reasonably be expected to interfere with enforcement proceedings; (B) Would deprive a person of a right to a fair trial or an impartial adjudication; (C) Could reasonably be expected to constitute an unwarranted invasion of

	<p>personal privacy;</p> <p>(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;</p> <p>(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or</p> <p>(F) Could reasonably be expected to endanger the life or physical safety of any individual.</p>
5 U.S.C. § 552(b)(8)	<p>Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.</p>
5 U.S.C. § 552(b)(9)	<p>Geological and geophysical information and data, including maps, concerning wells.</p>

(d) Presidential records subject to the FOIA may not be withheld under 5 U.S.C. § 552(b)(5) as defined above. However, Presidential records may be withheld under the remaining FOIA exemptions, as well as the six PRA restrictions for a period of 12 years

from when a President leaves office, in accordance with 44 U.S.C. § 2204 and Part 1270 of these regulations. Presidential records are also subject to review by representatives of the current and former Presidents, who may assert constitutionally-based privileges.

§ 1250.32 How may I request assistance with the FOIA process?

(a) For assistance at any point in the FOIA process, you may contact the NARA FOIA Public Liaison. That individual is responsible for assisting to reduce delays, increase transparency and understanding of the status of requests, and assisting to resolve FOIA disputes. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at <http://www.archives.gov/foia/contacts.html>.

(b) The Office of Government Information Services (OGIS) serves as the Federal FOIA Ombudsman and assists requesters and agencies to prevent and resolve FOIA disputes. OGIS also reviews agencies' FOIA policies, procedures, and compliance. You may contact OGIS using the information provided in § 1250.78, below.

Subpart C—Fees

§ 1250.50 General information on fees.

(a) General information on fees for archival records

(1) NARA is specifically authorized to charge for copying archival records under a separate fee statute, 44 U.S.C. §2116(c). As a result, archival records are exempt from the FOIA fee waiver provisions, per 5 U.S.C. § 552(a)(4)(A)(vi), and NARA does not grant fee waivers for archival records requested under the FOIA. But NARA is able to make most of its archival records available for examination at the NARA facility where the records are located. Whenever this is possible, you may review the records in a NARA research room at that facility free of charge.

(2) NARA does not charge search fees for FOIA requests for archival records, but it does limit the search to two hours.

(3) If requesters would like NARA to supply them with copies of archival records, NARA typically requires requesters to pay all applicable fees in accordance with the fee schedule before it provides the copies. NARA's Fee Schedule for archival records can be found at: www.archives.gov/research/order/fees.html.

(b) General information on FOIA fees for operational records.

(1) Requesters seeking access to NARA operational records may be charged search fees even if the records are not releasable or even if NARA does not find any responsive records during its search.

(2) If you are a noncommercial FOIA requester entitled to receive 100 free pages, but the records cannot be copied onto standard-sized (8.5 by 11) photocopy paper, NARA will copy them on larger paper and will reduce the copy fee by the normal charge for 100 standard-sized photocopies. If the records are not on textual media (e.g., photographs or electronic files), we will provide the equivalent of 100 pages of standard-sized paper copies for free.

(3) We will not charge you any fee if the total costs for processing your request are \$15 or less.

(4) If estimated search or review fees exceed \$50, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that specified amount.

(c) General information on fees for all FOIA requests

(1) If you have failed to pay FOIA fees in the past, we will require you to pay your past-due bill before we begin processing your request. If we estimate that your fees may be greater than \$250, we may require payment or a deposit before we begin processing your request.

(2) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in calculating the fees. In aggregating requests, we may consider the subject matter of the requests and whether the requests were filed close in time to one another.

(3) If in the course of negotiating fees a requester does not respond to a NARA component within 60 days, NARA reserves the right to administratively close the FOIA request after 60 calendar days have passed from date of the last correspondence NARA sent.

§ 1250.52 FOIA fee schedule for operational records.

In responding to FOIA requests for operational records, NARA will charge the following fees, where applicable, unless we have given you a reduction or waiver of fees under §1250.56.

(a) *Search fees* –

(1) *Manual searching.* When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is \$16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is \$33 per hour (or fraction thereof).

(2) *Computer searching.* This is the actual cost to NARA of operating the computer and the salary of the operator. When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is \$16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is \$33 per hour (or fraction thereof).

(b) *Review fees.* (1) Review fees are charged for time spent examining all documents that are responsive to a request to determine whether any FOIA exemptions must be applied to withhold information.

(2) The review fee is \$33 per hour (or fraction thereof).

(3) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Reproduction fees* —

(1) *Self-service photocopying.* At NARA facilities with self-service photocopiers, you may make reproductions of released paper records for \$0.25 cents per page.

(2) *Photocopying standard-sized pages.* When NARA produces the photocopies, the charge is \$0.30 cents per page.

(3) *Reproductions of electronic records.* The direct costs to NARA for staff time for programming, computer operations, and printouts or electromagnetic media to reproduce the requested information will be charged to requesters. When the work is relatively straightforward and can be performed by a clerical or administrative employee, the rate is \$16 per hour (or fraction thereof). When the request is more complicated and must be done by a NARA professional employee, the rate is \$33 per hour (or fraction thereof).

(4) *Copying other media.* This is the direct cost to NARA of the reproduction. Specific rates will be provided upon request.

§ 1250.54 How will NARA calculate FOIA fees for operational records?

(a) If you are a commercial use requester, NARA will charge you fees for searching, reviewing, and copying responsive records.

(b) If you are an educational or scientific institution requester, or a member of the news media, you are entitled to search time, review time, and up to 100 pages of copying without charge. NARA will charge copying fees only beyond the first 100 pages.

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, and are an “other requester,” you are entitled to two hours of search time, review time, and up to 100 pages of copying without charge. NARA will charge for search time beyond the first two hours and for copying beyond the first 100 pages.

§ 1250.56 How may I request a fee waiver for operational records?

(a) NARA will waive or reduce your fees for NARA operational records only if your request meets *both* of the following criteria:

(1) The request is in the public interest (i.e., information likely to contribute significantly to public understanding of the operations and activities of the government); and

(2) The request is not primarily in your commercial interest.

(b) To be eligible for a fee waiver or reduction you must explain:

(1) How the requested records pertain to the operations and activities of the Federal government. There must be a clear connection between the identifiable operations or activities of the Federal government and the subject of your request.

- (2) How the release will reveal meaningful information about Federal government activities that is not already publicly known.
- (3) How disclosure to you will advance the understanding of the general public on the issue.
- (4) Your expertise or understanding of the requested records.
- (5) How you intend to disseminate the requested information to a broad spectrum of the public.
- (6) How disclosure will lead to a significantly greater understanding of the government by the public.
- (c) After reviewing your request and determining that there is a substantial public interest in release, NARA will also determine if it furthers your commercial interests. If it does, you are not eligible for a fee waiver.
- (d) All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or waiver of fees.

Subpart D—Appeals

§ 1250.70 When may I appeal NARA's FOIA determination?

You may appeal any adverse determination, including:

- (a) Refusal to release a record, either in whole or in part;
- (b) Determination that a record does not exist or cannot be found;
- (c) Determination that the record you sought was not subject to the FOIA;
- (d) Denial of a request for expedited processing;
- (e) Denial of a fee waiver request; or

(f) Fee category determination.

§ 1250.72 How do I file an appeal?

(a) You may submit your appeal via mail or electronically. All appeals must be in writing and received by NARA within 35 calendar days of the date of NARA's denial letter.

(1) For appeals submitted via mail, you should mark both your letter and envelope with the words "FOIA Appeal," and include a copy of your initial request and NARA's denial.

(i) If NARA's Inspector General denied your request, send your appeal to the Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740-6001.

(ii) Send all other appeals for denial of access to Federal records to the Deputy Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740-6001. For Presidential records, appeals should be sent to the appropriate Presidential Library Director at the address listed in 36 CFR § 1253.3.

(2) For all appeals submitted electronically, except those regarding Presidential records, send an e-mail to FOIA@nara.gov. For Presidential records, electronic appeals must contain all the information listed in § 1250.72 and be sent to the e-mail address of the appropriate Presidential Library. These e-mail addresses are listed in 36 CFR § 1253.3. The subject line of the e-mail should read "PRA/FOIA appeal."

(b) In your appeal, you may wish to explain why you challenge NARA's determination, for example why NARA should release the records, grant your fee waiver request, or expedite the processing of your request. If NARA was not able to find the records you

wanted, explain why you believe NARA's search was inadequate. If NARA denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

§ 1250.74 How does NARA process appeals?

(a) NARA will respond to your appeal within 20 working days after its receipt by the appropriate designated appeal official. If NARA reverses or modifies the initial decision, it will inform you in writing and reprocess your request. For Presidential records, if any additional information is released, NARA must follow the notification procedures outlined in 36 CFR § 1250.26(e). If NARA does not change its initial decision, it will respond to you and explain the reasons for the decision, any FOIA exemptions that apply, and your right to judicial review of the decision if information is denied under a FOIA exemption.

(1) An adverse determination by the Archivist or Deputy Archivist will be the final action by NARA; and

(2) NARA will cease processing an appeal if a requester files a FOIA lawsuit.

(b) NARA will notify you of your right to seek judicial review of an adverse determination as set forth in the FOIA at 5 U.S.C. § 552(a)(4)(B). If you wish to see judicial review of any adverse determination, you must first appeal it under this section.

(c) NARA will also inform you that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road—OGIS
College Park, MD 20740
ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Subpart E—Special Situations

§ 1250.80 How does a submitter identify records containing confidential commercial information?

A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA Exemption 4. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

§ 1250.82 How does NARA process FOIA requests for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that it believes may contain confidential commercial

information and if the information is less than 10 years old, NARA will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, NARA believes that the records should properly be released under FOIA, it will make reasonable efforts to inform the submitter. The notice to the submitter will describe the business information requested or include copies of the requested records.

(b) When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. NARA's notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(c) When the request is for information from a voluminous number of submitters, notification may be made by posting or publishing the notice in a place reasonably likely to inform the submitters of the proposed disclosure.

(d) The submitter will have 10 working days from the receipt of our notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period as appropriate.

(e) NARA will review and consider all objections to release that are received within the time limit. If NARA decides to release the records, it will inform the submitter in writing. This notice will include copies of the records as NARA intends to release them and its reasons for deciding to release. NARA will also inform the submitter that it intends to release the records 10 working days after the date of the notice unless a U.S. District Court forbids disclosure.

(f) If the requester files a lawsuit under the FOIA for access to any withheld records, NARA will inform the submitter.

(g) NARA will notify the requester whenever it notifies the submitter of the opportunity to object or to extend the time for objecting.

Dated: July 29, 2013

DAVID S. FERRIERO

Archivist of the United States.

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